

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Criminal Misc. Application 638 of 2006

Shyam Sundar Nainwal
S/o Late Sri Kharak Singh Nainwal
R/o Village Kapor
P.O. Lamgarha, District Almora
At present Jailor
District Jail Nainital

.....Applicant

Vs.

1. State of Uttaranchal through
Secretary, Ministry of Home Affairs
Dehradun
 2. Senior Superintendent of Police
Nainital, Uttaranchal
- Opp. Parties

Sri R.S. Sammal, learned counsel for the applicant
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr. P.C. has been filed by the applicant for quashing order dated 17.07.2006 passed by Special Judge, Gangster Act/District Judge, Nainital under Sections Judge, Gangster Act/ District Judge, Nainital under Sections 2(c) /3 U.P. Gangsters & Anti Social Activities (Prevention) Act.

2. Brief facts giving rise to this petition are that on 24.06.2004 three under trial prisoners namely, Mohan Paliwal, Rajesh Kumar Singh and Raju @ Rajendra Singh made their escape successful from the District Jail Nainital, after making a murderous assault on jailor and warders. Thereafter, District Magistrate, Nainital initiated Magisterial in this Case and Sub-divisional Magistrate, Haldwani was appointed as enquiry officer. The learned Sub-Divisional Magistrate, Haldwani submitted his report to the District Magistrate 05.07.2006. Thereafter, S.O. Police Station, Tallital, Nainital took the applicant into custody under Sections 222, 223, 225 read with Section 120(B) I.P.C. registered in Crime No. 710 of 2006.

3. The learned Special Judge after having perused the entire record and evidence available on record remanded the applicant under Section 2(c)/3 U.P. Gangster & Anti Social Activities (Prevention) Act.

4. Heard Sri R.S. Sammal, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

5. Learned counsel for the petitioner has argued that there is nothing in the enquiry report of the Magistrate, which could show any allegation against the applicant that he was responsible for the escape of the under trial prisoners.

6. I fail to appreciate the arguments advanced by the learned counsel for the petitioner. Since it is a disputed question of fact and the petitioner has full liberty to adduce the evidence in support of his case before the trial judge, I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this stage. Any judgment rendered by me would amount to premature judgment especially under the circumstance that the evidence is still to adduce before the trial judge and it is the trial judge who has to adjudicate the matter on the basis of the evidence filed before it.

7. I do not find any abuse of process of court at this stage. The petition lacks merit and is liable to be dismissed.

8. Accordingly, the petition under Section 482 Cr.P.C. is dismissed.

(B.C. Kandpal, J.)

05.08.2006
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